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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,381	03/29/2004	Jeffrey Stearns	5490E-000393	2594

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EXAMINER

JACKSON, BRANDON LEE

ART UNIT	PAPER NUMBER
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3772

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/812,381	Applicant(s) STEARNS ET AL.	
	Examiner Brandon Jackson	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to arguments/amendments filed 5/14/2007. Currently, claims 1-18 are pending in the instant application.

Response to Arguments

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-6, 9, 11, and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrrell (US Patent 923,217) in view of Grim et al. (US Patent 5,695,452). Tyrrell discloses a wrist brace (10) comprising a band (11, 12)

Art Unit: 3772

circumferentially fitted around the wrist (fig. 1) and having an opening (19) positioned to circumferentially surround the ulnar styloid. The band (11, 12) is adjustable (col. 1, lines 20-21) and includes a strap (16) extending from the band (11, 12) with a fastener (13). The fastener (13) is not a hook-and-loop fastener; it is a buckle (14) fastener. However, buckle fasteners are known substitutes for hook and loop fasteners and would not patentably distinguish the device. The band (11, 12) includes a buckle/slot (14) for receiving the strap (16), wherein the slot is a D-ring. Tyrrell fails to disclose a pressure ring made of an elastomer and having a common opening with the opening in the band. However, Grim teaches a support device (18) comprising an opening (26) and an oval pressure ring (24) for support of the patella tendon. The pressure ring (24) and the opening (26) share a common opening. The pressure ring is made of an elastomer (col. 6, lines 10-14), therefore the ring is deformable to a shape defined by the ulnar styloid. The Grim device is not a wrist device, however it is considered analogous art because it is a wrap device for supporting a tendon in a joint. The pressure ring (24) stabilizes the tendon and would be fully capable of preventing the tendon from impinging on the ulnar nerve. Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Tyrrell device to have an elastomer pressure ring, as taught by Grim, in order to provide more support and comfort to the user.

With respect to claims 14-18, the Tyrrell/Grim device teaches all elements of the claimed invention, therefore the method steps would be obvious to one of ordinary skill in the art because they would have resulted from the use of the Tyrrell/Grim device.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrrell/Grim as applied to claim 1 above, and further in view of Marx (U.S. patent 4,048,991). Tyrrell/Grim substantially discloses the claimed invention; see rejection to claim 1 above. Tyrrell/Grim fails to disclose a band including padding. However, Marx teaches a wrist wrap (fig. 1) with a foam (col. 3, lines 4-6) padding (12). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Tyrrell/Grim device with padding, as taught by Marx, in order to provide the user with more comfort and to absorb sweat when the device is used during physical activity.

Claims 7-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrrell/Grim as applied to claims 1, 3-5, and 9 above, and further in view of Watanabe et al. (U.S. Patent 4,777,946). Tyrrell/Grim substantially discloses the claimed invention; see rejections to claims 1, 3-5, and 9 above. Tyrrell/Grim fails to disclose an insert that is a frame reinforcing the opening and that the elastomer is medical grade silicone. However, Watanabe teaches a brace (1) comprising a band (3) with an oval shaped opening (5) that circumferentially fits around a joint, an opening (5) to exert controlled pressure (col. 3, lines 60-62), and an insert (4) defining the D-ring (11) and reinforcing (fig. 2) the opening (5). The band surrounding the opening (5) is made of a deformable (col. 2, lines 65-66) silicone elastomer (col. 3, lines 16-17). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Tyrrell/Grim device with insert and medical grade silicone, as taught by Watanabe, in order to provide more support for the device and the substitution

of elastomers is a mere substitution of materials that do not patentably distinguish the device.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon Jackson whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brandon Jackson
Examiner
Art Unit 3772

BLJ


PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700
8/6/07